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Dated: \_\_\_\_\_ Signature: William K. Merkel

Docket No.: 27373/36638A  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Re Patent Application of:  
Ralph Weichselbaum et al.

Application No.: 09/964,042

Art Unit: 1635

Filed: September 26, 2001

Examiner: J. E. Angell

For: TREATMENT OF TUMORS WITH  
GENETICALLY ENGINEERED HERPES  
VIRUS

**DECLARATION OF RALPH R. WEICHSELBAUM, M.D.**

I, Ralph Weichselbaum, do hereby declare and state as follows:

1. I am a named co-inventor, along with Richard Whitley and Bernard Roizman, on the above-identified patent application. I am familiar with the contents of the patent application and make this declaration to provide information that may be relevant to examination of the application.
2. I understand that the examiner of the above-identified U.S. patent application has cited a publication, Advani et al., "Enhancement of replication of genetically engineered herpes simplex viruses by ionizing radiation: a new paradigm for destruction of therapeutically intractable tumors," Gene Therapy 5:160-165 (1998) (hereinafter, "Advani"), as alleged prior art to the above-noted patent application.
3. I am a co-author of the Advani publication, along with S. Advani, G. Bibley, P. Song, D. Hallahan, Y. Kataoka, and B. Roizman. I am familiar with the contributions made to the Advani publication by each of the named co-authors.
4. On information and belief, Advani does not disclose or suggest the subject matter of any of the claims pending in the above-identified patent application. To the extent that it is properly determined by another that Advani discloses or suggests any aspect of the subject matter claimed in the above-identified patent application, that communication

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is a communication disclosing or suggesting an aspect of the invention of Dr. Weichselbaum, Dr. Whitley, and me, and not of any of the other co-authors named in Advani.

5. The work performed by the co-authors of Advani not named as inventors in the above-identified patent application, i.e., S. Advani, G. Sibley, P. Song, D. Hallahan, and Y. Kataoka, that related to the Advani publication was done under the direction and control of at least one of the named inventors, i.e., Dr. Roizman, Dr. Whitley, and me.

6. More particularly, D. Hallahan was a junior member of the faculty at The University of Chicago at the time the work reported in Advani was performed. I consulted Dr. Hallahan with respect to certain aspects of the experimental work and Dr. Hallahan also assisted me in interpreting data and in drafting the Advani manuscript. G. Sibley and P. Song were medical residents working in my laboratory and generating data that was reported in Advani; this work was performed under my direction and control. Y. Kataoka, a research associate, and S. Advani, a medical student, also worked in my laboratory conducting experiments under my direction and control.

7. I further declare that all statements made herein of my own knowledge are true, that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both (18 U.S.C. 1001), and may jeopardize the validity of the application or any patent issuing thereon.

Dated: 6/23/06

Respectfully submitted,

By 

Ralph R. Weichselbaum, M.D.